

26-39-101. Title.

This chapter is known as the "Utah Child Care Licensing Act."

26-39-102. Definitions.

As used in this chapter:

- (1) "Child care" means continuous care and supervision of five or more qualifying children, that is:
 - (a) in lieu of care ordinarily provided by a parent in the parent's home;
 - (b) for less than 24 hours a day; and
 - (c) for direct or indirect compensation.
- (2) "Child care program" means a child care facility or program operated by a person who holds a license or certificate issued in accordance with this chapter.
- (3) "Committee" means the Child Care Licensing Advisory Committee, created in Section 26-39-201.
- (4) "Public school" means:
 - (a) a school, including a charter school, that:
 - (i) is directly funded at public expense; and
 - (ii) provides education to qualifying children for any grade from first grade through twelfth grade; or
 - (b) a school, including a charter school, that provides:
 - (i) preschool or kindergarten to qualifying children, regardless of whether the preschool or kindergarten is funded at public expense; and
 - (ii) education to qualifying children for any grade from first grade through twelfth grade, if each grade, from first grade to twelfth grade, that is provided at the school, is directly funded at public expense.
- (5)
 - (a) "Qualifying child" means a person who is:
 - (i) under the age of 13; or
 - (ii) under the age of 18, if the person has a disability; and
 - (b) a child of:
 - (i) a person other than the person providing care to the child;
 - (ii) a licensed or certified residential child care provider, if the child is under the age of four; or
 - (iii) an employee or owner of a licensed child care center, if the child is under the age of four.
- (6) "Residential child care" means child care provided in the home of a provider.

26-39-201. Child Care Licensing Advisory Committee.

- (1)
 - (a) There is established the Child Care Licensing Advisory Committee to advise the department on rules made by the department under this chapter.
 - (b) The committee shall be composed of the following 13 members who shall be appointed by the executive director:
 - (i) two child care consumers;
 - (ii) two licensed residential child care providers;
 - (iii) one certified residential child care provider;
 - (iv) five representatives of licensed child care center programs;
 - (v) one individual with expertise in early childhood development; and
 - (vi) two health care providers.
- (2) Members shall be appointed for four-year terms, except for those members who have been appointed

to complete an unexpired term. Appointments and reappointments may be staggered so that 1/4 of the committee changes each year. The committee shall annually elect a chairman from its membership.

- (3) The committee shall meet at least quarterly, or more frequently as determined by the executive director, the chairman, or three or more members of the committee. Seven members constitute a quorum and a vote of the majority of the members present constitutes an action of the committee.

26-39-202. Members serve without pay -- Reimbursement for expenses.

- (1) A member of the committee who is not a government employee shall receive no compensation or benefits for the member's services, but may:
 - (a) receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107; or
 - (b) decline to receive per diem and expenses for the member's service.
- (2) A member of the committee who is a state government officer or employee and who does not receive salary, per diem, or expenses from the member's agency for the member's service may:
 - (a) receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107; or
 - (b) decline to receive per diem and expenses for the member's service.

26-39-301. Duties of the department.

- (1) With regard to child care programs licensed under this chapter, the department may:
 - (a) make and enforce rules to implement this chapter and, as necessary to protect qualifying children's common needs for a safe and healthy environment, to provide for:
 - (i) adequate facilities and equipment; and
 - (ii) competent caregivers considering the age of the children and the type of program offered by the licensee;
 - (b) make and enforce rules necessary to carry out the purposes of this chapter, in the following areas:
 - (i) requirements for applications, the application process, and compliance with other applicable statutes and rules;
 - (ii) documentation and policies and procedures that providers shall have in place in order to be licensed, in accordance with Subsection (1)(a);
 - (iii) categories, classifications, and duration of initial and ongoing licenses;
 - (iv) changes of ownership or name, changes in licensure status, and changes in operational status;
 - (v) license expiration and renewal, contents, and posting requirements;
 - (vi) procedures for inspections, complaint resolution, disciplinary actions, and other procedural measures to encourage and assure compliance with statute and rule; and
 - (vii) guidelines necessary to assure consistency and appropriateness in the regulation and discipline of licensees; and
 - (c) set and collect licensing and other fees in accordance with Section 26-1-6.
- (2) Rules made under this chapter shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
 - (a) The department may not regulate educational curricula, academic methods, or the educational philosophy or approach of the provider.

- (b) The department shall allow for a broad range of educational training and academic background in certification or qualification of child day care directors.
- (4) In licensing and regulating child care programs, the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided.
- (5) Notwithstanding the definition of "qualifying child" in Section 26-39-102, the department shall count children through age 12 and children with disabilities through age 18 toward the minimum square footage requirement for indoor and outdoor areas, including the child of:
 - (a) a licensed residential child care provider; or
 - (b) an owner or employee of a licensed child care center.
- (6) Notwithstanding Subsection (1)(a)(i), the department may not exclude floor space used for furniture, fixtures, or equipment from the minimum square footage requirement for indoor and outdoor areas if the furniture, fixture, or equipment is used:
 - (a) by qualifying children;
 - (b) for the care of qualifying children; or
 - (c) to store classroom materials.
- (7)
 - (a) A child care center constructed prior to January 1, 2004, and licensed and operated as a child care center continuously since January 1, 2004, is exempt from the department's group size restrictions, if the child to caregiver ratios are maintained, and adequate square footage is maintained for specific classrooms.
 - (b) An exemption granted under Subsection (7)(a) is transferrable to subsequent licensed operators at the center if a licensed child care center is continuously maintained at the center.
- (8) The department shall develop, by rule, a five-year phased-in compliance schedule for playground equipment safety standards.
- (9) Nothing in this chapter may be interpreted to grant a municipality or county the authority to license or certify a child care program.

26-39-401. Licensure requirements -- Expiration -- Renewal.

- (1) Except as provided in Section 26-39-403, a person shall be licensed or certified in accordance with this chapter if the person:
 - (a) provides or offers child care; or
 - (b) provides care to qualifying children and requests to be licensed.
- (2) The department may issue licenses for a period not exceeding 24 months to child care providers who meet the requirements of:
 - (a) this chapter; and
 - (b) the department's rules governing child care programs.
- (3) A license issued under this chapter is not assignable or transferable.

26-39-402. Residential child care certificate.

- (1)
 - (a) A residential child care provider of five to eight qualifying children shall obtain a Residential Child Care Certificate from the department, unless Section 26-39-403 applies.
 - (b) The minimum qualifications for a Residential Child Care Certificate are:
 - (i) the submission of:
 - (A) an application in the form prescribed by the department;

- (B) a certification and criminal background fee established in accordance with Section 26-1-6; and
- (C) in accordance with Section 26-39-404, identifying information for each adult person and each juvenile age 12 through 17 years of age who resides in the provider's home:
 - (I) for processing by the Department of Public Safety to determine whether any such person has been convicted of a crime;
 - (II) to screen for a substantiated finding of child abuse or neglect by a juvenile court; and
 - (III) to discover whether the person is listed in the Licensing Information System described in Section 62A-4a-1006;
- (ii) an initial and annual inspection of the provider's home within 90 days of sending an intent to inspect notice to:
 - (A) check the immunization record of each qualifying child who receives child care in the provider's home;
 - (B) identify serious sanitation, fire, and health hazards to qualifying children; and
 - (C) make appropriate recommendations; and
- (iii) annual training consisting of ten hours of department-approved training as specified by the department by administrative rule, including a current department-approved CPR and first aid course.
- (c) If a serious sanitation, fire, or health hazard has been found during an inspection conducted pursuant to Subsection (1)(b)(ii), the department shall require corrective action for the serious hazards found and make an unannounced follow up inspection to determine compliance.
- (d) In addition to an inspection conducted pursuant to Subsection (1)(b)(ii), the department may inspect the home of a residential care provider of five to eight qualifying children in response to a complaint of:
 - (i) child abuse or neglect;
 - (ii) serious health hazards in or around the provider's home; or
 - (iii) providing residential child care without the appropriate certificate or license.
- (2) Notwithstanding this section:
 - (a) a license under Section 26-39-401 is required of a residential child care provider who cares for nine or more qualifying children;
 - (b) a certified residential child care provider may not provide care to more than two qualifying children under the age of two; and
 - (c) an inspection may be required of a residential child care provider in connection with a federal child care program.
- (3) With respect to residential child care, the department may only make and enforce rules necessary to implement this section.

26-39-403. Exclusions from chapter -- Criminal background checks by an excluded person.

- (1) The provisions and requirements of this chapter do not apply to:
 - (a) a facility or program owned or operated by an agency of the United States government;
 - (b) group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;
 - (c) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;
 - (d) care provided to qualifying children by or in the homes of parents, legal guardians, grandparents,

- brothers, sisters, uncles, or aunts;
- (e) care provided to qualifying children, in the home of the provider, for less than four hours a day or on a sporadic basis, unless that child care directly affects or is related to a business licensed in this state;
- (f) care provided to qualifying children as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution;
- (g) care provided to qualifying children by a public or private institution of higher education, if the care is provided in connection with a course of study or program, relating to the education or study of children, that is provided to students of the institution of higher education;
- (h) care provided to qualifying children at a public school by an organization other than the public school, if:
 - (i) the care is provided under contract with the public school or on school property; or
 - (ii) the public school accepts responsibility and oversight for the care provided by the organization;
- (i) care provided to qualifying children as part of a summer camp that operates on federal land pursuant to a federal permit;
- (j) care provided by an organization that:
 - (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code;
 - (ii) is provided pursuant to a written agreement with:
 - (A) a municipality, as defined in Section 10-1-104, that provides oversight for the program; or
 - (B) a county that provides oversight for the program; and
 - (iii) is provided to children who are over the age of four and under the age of 13; or
- (k) care provided at a residential support program that is licensed by the Department of Human Services.
- (2) A person who is excluded, under Subsection (1), from the provisions and requirements of this chapter, shall conduct a criminal background check on all of the person's employees who have access to a qualifying child to whom care is provided by the person.

26-39-404. Disqualified individuals -- Criminal history checks -- Payment of costs.

- (1)
 - (a) Each person requesting a residential certificate or to be licensed or to renew a license under this chapter shall submit to the department the name and other identifying information, which shall include fingerprints, of existing, new, and proposed:
 - (i) owners;
 - (ii) directors;
 - (iii) members of the governing body;
 - (iv) employees;
 - (v) providers of care;
 - (vi) volunteers, except parents of children enrolled in the programs; and
 - (vii) all adults residing in a residence where child care is provided.
 - (b) A person seeking renewal of a residential certificate or license under this section is not required to submit fingerprints of an individual referred to in Subsections (1)(a)(i) through (vi), if:
 - (i) the individual has resided in Utah for the last five years;

- (ii) the individual has:
 - (A) previously submitted fingerprints under this section for a national criminal history record check; and
 - (B) resided in Utah continuously since that time; or
 - (iii) as of May 3, 1999, the individual had one of the relationships under Subsection (1)(a) with a child care provider having a residential certificate or licensed under this section and the individual has resided in Utah continuously since that time.
- (c)
 - (i) The Utah Division of Criminal Investigation and Technical Services within the Department of Public Safety shall process the information required under Subsection (1)(a) to determine whether the individual has been convicted of any crime.
 - (ii) The Utah Division of Criminal Investigation and Technical Services shall submit fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record check.
 - (iii) The applicant for the license or residential certificate shall pay the cost of conducting a record check under this Subsection (1)(c).
- (2)
 - (a) Each person requesting a residential certificate or to be licensed or to renew a license under this chapter shall submit to the department the name and other identifying information of any person age 12 through 17 who resides in the residence where the child care is provided. The identifying information required for a person age 12 through 17 does not include fingerprints.
 - (b) The department shall access the juvenile court records to determine whether a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:
 - (i) the person described in Subsection (1) is under the age of 28; or
 - (ii) the person described in Subsection (1) is:
 - (A) over the age of 28; and
 - (B) has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.
- (3) Except as provided in Subsection (4), a licensee under this chapter may not permit a person who has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor, or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor, to:
 - (a) provide child care;
 - (b) provide volunteer services for a licensed child care program or a child care program operating under a residential child care certificate;
 - (c) reside at the premises where child care is provided; or
 - (d) function as an owner, director, or member of the governing body of a licensed child care program or a child care program operating under a residential child care certificate.
- (4)
 - (a) The department may, by rule, exempt the following from the restrictions of Subsection (3):
 - (i) specific misdemeanors; and
 - (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be misdemeanors.
 - (b) In accordance with criteria established by rule, the executive director may consider and exempt individual cases involving misdemeanors, not otherwise exempt under Subsection (4)(a) from the

restrictions of Subsection (3).

26-39-501. Investigations -- Records.

- (1) The department may conduct investigations necessary to enforce the provisions of this chapter.
- (2) For purposes of this section:
 - (a) "Anonymous complainant" means a complainant for whom the department does not have the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made.
 - (b) "Confidential complainant" means a complainant for whom the department has the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made, but who elects under Subsection (3)(c) not to be identified to the subject of the complaint.
 - (c) "Subject of the complaint" means the licensee or certificate holder about whom the complainant is informing the department.
- (3)
 - (a) If the department receives a complaint about a child care program or residential child care, the department shall:
 - (i) solicit information from the complainant to determine whether the complaint suggests actions or conditions that could pose a serious risk to the safety or well-being of a qualifying child;
 - (ii) as necessary:
 - (A) encourage the complainant to disclose the minimum personal identifying information necessary, including the complainant's full name, for the department to attempt to subsequently communicate with the complainant;
 - (B) inform the complainant that the department may not investigate an anonymous complaint;
 - (C) inform the complainant that the identity of a confidential complainant may be withheld from the subject of a complaint only as provided in Subsection (3)(c)(ii); and
 - (D) inform the complainant that the department may be limited in its use of information provided by a confidential complainant, as provided in Subsection (3)(c)(ii)(B); and
 - (iii) inform the complainant that a person is guilty of a class B misdemeanor under Section 76-8-506 if the person gives false information to the department with the purpose of inducing a change in that person's or another person's licensing or certification status.
 - (b) If the complainant elects to be an anonymous complainant, or if the complaint concerns events which occurred more than six weeks before the complainant contacted the department:
 - (i) shall refer the information in the complaint to the Division of Child and Family Services within the Department of Human Services, law enforcement, or any other appropriate agency, if the complaint suggests actions or conditions which could pose a serious risk to the safety or well-being of a child;
 - (ii) may not investigate or substantiate the complaint; and
 - (iii) may, during a regularly scheduled annual survey, inform the licensee or certificate holder who is the subject of the complaint of allegations or concerns raised by:
 - (A) the anonymous complainant; or
 - (B) the complainant who reported events more than six weeks after the events occurred.
 - (c)
 - (i) If the complainant elects to be a confidential complainant, the department shall determine

whether the complainant wishes to remain confidential:

- (A) only until the investigation of the complaint has been completed; or
- (B) indefinitely.

(ii)

- (A) If the complainant elects to remain confidential only until the investigation of the complaint has been completed, the department shall disclose the name of the complainant to the subject of the complaint at the completion of the investigation, but no sooner.
- (B) If the complainant elects to remain confidential indefinitely, the department:
 - (I) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of the complainant, including to the subject of the complaint; and
 - (II) may not use information provided by the complainant to substantiate an alleged violation of state law or department rule unless the department independently corroborates the information.

(4)

- (a) Prior to conducting an investigation of a child care program or residential child care in response to a complaint, a department investigator shall review the complaint with the investigator's supervisor.
 - (b) The investigator may proceed with the investigation only if:
 - (i) the supervisor determines the complaint is credible;
 - (ii) the complaint is not from an anonymous complainant; and
 - (iii) prior to the investigation, the investigator informs the subject of the complaint of:
 - (A) except as provided in Subsection (3)(c), the name of the complainant; and
 - (B) except as provided in Subsection (4)(c), the substance of the complaint.
 - (c) An investigator is not required to inform the subject of a complaint of the substance of the complaint prior to an investigation if doing so would jeopardize the investigation. However, the investigator shall inform the subject of the complaint of the substance of the complaint as soon as doing so will no longer jeopardize the investigation.
- (5) If the department is unable to substantiate a complaint, any record related to the complaint or the investigation of the complaint:
- (a) shall be classified under Title 63G, Chapter 2, Government Records Access and Management Act, as:
 - (i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304; or
 - (ii) a protected record under Section 63G-2-305; and
 - (b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an individual child care program, licensee, certificate holder, or complainant.
- (6) Any record of the department related to a complaint by an anonymous complainant is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, and, notwithstanding Subsection 63G-2-201(5)(b), may not be disclosed in a manner that identifies an individual child care program, licensee, certificate holder, or complainant.

26-39-601. License violations -- Penalties.

- (1) The department may deny or revoke a license and otherwise invoke disciplinary penalties if it finds:
 - (a) evidence of committing or of aiding, abetting, or permitting the commission of any illegal act on the premises of the child care facility;
 - (b) a failure to meet the qualifications for licensure; or

- (c) conduct adverse to the public health, morals, welfare, and safety of children under its care.
- (2) The department may also place a department representative as a monitor in a facility, and may assess the cost of that monitoring to the facility, until the licensee has remedied the deficiencies that brought about the department action.
- (3) The department may impose civil monetary penalties in accordance with Title 63G, Chapter 4, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules made pursuant to this chapter, as follows:
 - (a) if significant problems exist that are likely to lead to the harm of a qualifying child, the department may impose a civil penalty of \$50 to \$1,000 per day; and
 - (b) if significant problems exist that result in actual harm to a qualifying child, the department may impose a civil penalty of \$1,050 to \$5,000 per day.

26-39-602. Offering or providing care in violation of chapter -- Misdemeanor.

Notwithstanding the provisions of Title 26, Chapter 23, Enforcement Provisions and Penalties, a person who provides or offers child care except as provided by this chapter is guilty of a class A misdemeanor.

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